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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/988,658

11/20/2001

Akira Oosawa

Q66559

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10/25/2006

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EXAMINER

LAVIN, CHRISTOPHER L

ART UNIT

PAPER NUMBER

2624

DATE MAILED: 10/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/988,658

Applicant(s)

OOSAWA, AKIRA

Examiner

Christopher L. Lavin

Art Unit

2624

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 10/13/06 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 13 October 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

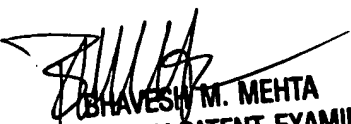
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: The examiner would first like to state that image registration artifacts are well known in the art and the applicant does not provide a new definition of an artifact in the specification. Jatko is focused on moving artifacts resulting in image registration and therefore meets the requirements of the claims.

The examiner would also like to point out that the claim language currently requires enhancement "relative to artifacts". The claim does not state "all artifacts". It only requires that some of the artifacts be reduced. Jatko would clearly reduce the smaller artifacts.

Moving onto the arguments. The applicant argues that Jatko would not remove the artifacts resulting from Kano. However as both references are refereeing to artifact caused by image registration it is reasonable to expect at least some of the artifacts in Kano will be removable by Jatko.

The applicant states "there is no disclosure or suggestion in Jatko that its morphological operations would be applicable to the types of "artifacts" found in temporal subtraction images". Regardless of what the subtraction image is going to be used for. Image subtraction is the same in any art. Jatko discloses an image subtraction that results in artifacts, as does Kano. Kano will have at least some similar artifacts to those found in Jatko.

In the first partial paragraph of page 5 of the remarks the applicant's representative argues that "contrary to the Examiner's contention, the "artifacts" in Kano may not necessarily be small, i.e., one or two pixels, and the "growth of a tumor" may not necessarily be larger than one or two pixels". The examiner would point out that in the applicant's own spec, paragraph 79 of the pg pub:

"Because the opening-process from among the aforementioned several types of morphology processes is an operation consisting of eliminating the high-density image portions among the image portions smaller in size than the structuring element, aside from the diseased portion K, which is larger than the structuring element, the artifacts L1 (i.e., the artifacts having a high-density from among the artifacts L) that are smaller in size than the structuring element are substantially eliminated. In the same manner, the closing-process from among the aforementioned several types of morphology processes is an operation consisting of eliminating the low-density image portions among the image portions smaller in size than the structuring element, aside from the diseased portion K, which is larger than the structuring element, the artifacts L2 (i.e., the artifacts having a low-density from among the artifacts L) that are smaller in size than the structuring element are substantially eliminated (FIG. 8C)."

So the specification would suffer from the same problem brought up by the applicant in arguments.

Finally with regards to applicant's arguments over claims 15 and 16, the examiner points the applicant to Figure 1b and not Figure 1c where it is clear that ROIs from two images are compared.


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